Blue Valley Plantation Bhd v Pentadbir Tanah Daerah Cameron Highland & Anor

COURT OF APPEAL (PUTRAJAYA) — CIVIL APPLICATION NO C-01(A)-301-05 OF 2021
YAACOB MD SAM, AZIZAH NAWAWI AND MOHD NAZLAN JJCA
1 AUGUST 2023

Land law — Acquisition of land — Appeal against decision of Land Reference Court ('LRC') — Whether appeal was essentially against quantum of compensation although made to look as if LRC erred on issues of law — Whether quantum of compensation awarded by LRC was not appealable — Land Acquisition Act 1960, s 40D(3) read with s 49(1) — Whether decision of LRC was unassailable — Whether questions of law framed in appeal against LRC's decision were result of misapprehending the real factual and legal issues involved

Following a land enquiry held by the first respondent ('R1'), a total compensation of RM3,564,000 was awarded to the appellant for the compulsory acquisition of six hectares of its land ('the acquired land'). Dissatisfied with the award, the appellant caused the matter to be referred to the High Court by way of a land reference. Before the Land Reference Court ('LRC'), the appellant's valuer suggested that the total compensation should be RM22,602,000 based on comparisons of sales of lands within the vicinity which were zoned for mixed development and/or development. R1's valuer, on the other hand, contended that the total compensation should be RM3,240,000 based on comparisons of sales of lands within the vicinity which were categorised either as agricultural or 'NIL'. Based on the two conflicting valuation reports, the private assessor in the LRC opined that total compensation for the acquired land should be RM3,876,000 based on RM646,000 per hectare whilst the government assessor took the view that it should be RM4,020,000 based on RM670,000 per hectare. The judicial commissioner ('JC') followed the government assessor's opinion and increased the total compensation awarded to the appellant to RM4,020,000. Despite the increase, the appellant filed the instant appeal against the decision premised on three 'questions of law'. The questions alleged that the JC had erred in law in: (a) failing to value the acquired land on the basis that it was zoned for mixed development; (b) failing to have regard to prices paid in recent sales of lands within the vicinity of the acquired land which had similar characteristics as the acquired land; and (c) failing to state how the LRC arrived at the value of RM670,000 per hectare for the acquired land and the category of land use on which the valuation was based.

Held, unanimously dismissing the appeal:

(1) The JC was not plainly wrong when he found that the acquired land was not part of a mixed development plan and therefore its value should not be assessed on that basis (see para 38).

(2) The gazette notification for the acquisition was dated 19 July 2018. As at 9 August 2018, the land use category for the acquired land was stated as 'NIL'. As found by the JC, and with which the assessors also agreed, pursuant to s 9A(5) of the Land Acquisition Act 1960 ('the LAA'), the information regarding the land use of the acquired land must be obtained from the State Director of Town and Country Planning and such information was conclusive evidence with regard to the land use at the date of the acquisition. In the present case, the first respondent had obtained the information regarding the land use from the Pahang State Director of Town and Country Planning where,, in the letter dated 11 December 2019, the State Director had stated that the acquired land was zoned for 'infrastructure and utilities' land use where the only permitted activities were those related to electricity and water supply, irrigation and drainage, telecommunications, solid waste management and sanitation. In view of the above, the appellant's reliance on a Majlis Daerah Cameron Highlands letter dated 1 December 2020 to contend that the acquired land had been zoned for mixed development, and therefore had to be valued as such, was clearly misconceived (see paras 28 & 32–37).

(3) Paragraph 2(1) of the Third Schedule of the LAA declared that the applicant's valuation report alone must establish a prima facie case for the applicant, ie, the burden was on the applicant to make out a prima facie case of inadequate award. There was nothing in the appellant's valuation report of any sales of lands with similar characteristics as the acquired land, that is, land that had been zoned for infrastructure and utilities. The appellant could not now blame the JC for failing to consider such transactions when the appellant itself had failed to provide comparable transactions involving lands zoned for infrastructure and utilities in its valuation report. The appellant's valuation report was premised on the wrong notion that the acquired land was zoned for mixed development and the report gave three comparable sale transactions of lands within the vicinity based on such land use. Since the acquired land was zoned for infrastructure and utilities, the JC was justified in rejecting comparisons of sales transactions involving lands zoned for mixed development (see paras 40–44).

(4) Since the appellant's argument had been rejected that the acquired land should be valued on the basis that they were for mixed development land use, and the appellant had failed to establish the prima facie value for the acquired land, the JC looked to the government valuer's report and with the necessary modification increased the value from RM540,000 per

hectare to RM670,000 per hectare which resulted in the total compensation to the appellant being increased to RM4,020,000 (see para 46).

(5) An appeal against the award of the Land Reference Court could only be on questions of law. The quantum of compensation awarded was not appealable. This was based on s 40D(3) read with s 49(1) of the LAA. As the purported questions of law posed in the instant land reference were essentially related to issues of fact on how valuation principles applied when computing the amount of compensation to be awarded, ie, how the final amount of the compensation was arrived at and how that amount was wrong, they did not pass the test of being proper questions of law and could not be allowed under the proviso to s 49(1) of the LAA (see paras 16, 47–48 & 50–51).

[Bahasa Malaysia summary

Selepas siasatan tanah oleh responden pertama ('R1'), jumlah pampasan sebanyak RM3,564,000 telah diberikan kepada perayu untuk pengambilalihan tanah sebanyak enam hektar ('tanah yang diambil'). Tidak berpuas hati dengan pampasan itu, perayu merujuk kes ke Mahkamah Tinggi untuk satu rujukan tanah. Ketika prosiding di Mahkamah Rujukan Tanah ('MJT'), penilai perayu menghujahkan bahawa jumlah pampasan yang sepatutnya dibayar adalah RM22,602,000 berdasarkan perbandingan jualan tanah di kawasan itu yang dizonkan untuk pembangunan dan/atau pembangunan bercampur. Penilai R1 pula menghujahkan bahawa jumlah pampasan yang sepatutnya diberikan adalah sebanyak RM3,240,000 berdasarkan perbandingan jualan tanah di kawasan itu yang dikategorikan sama ada sebagai pertanian atau 'NIL'. Berdasarkan dua laporan penilaian yang bercanggah itu, penilai swasta ketika prosiding MJT mencadangkan bahawa jumlah pampasan bagi tanah yang diambil alih adalah sebanyak RM3,876,000 berdasarkan RM646,000 sehektar manakala penilai kerajaan mencadangkan bahawa jumlah sepatutnya adalah sebanyak RM4,020,000 berdasarkan RM670,000 sehektar. Pesuruhjaya Kehakiman ('PK') menggunapakai dapatan penilai kerajaan dan meningkatkan jumlah pampasan yang diberikan kepada perayu kepada RM4,020,000. Walaupun terdapat peningkatan, perayu memfailkan rayuan ini terhadap keputusan itu berdasarkan tiga 'persoalan undang-undang'. Soalan-soalan itu ialah samaada PK telah terkhilaf dari segi undang-undang ketika: (a) gagal menilai tanah yang diambil di dalam zon pembangunan bercampur; (b) gagal mengambil kira nilai tanah di dalam penjualan tanah-tanah di sekitar tanah yang diambil baru-baru ini yang mempunyai ciri-ciri yang sama seperti tanah yang diambil; dan (c) gagal menyatakan bagaimana MRT membuat dapatan jumlah RM670,000 sehektar untuk tanah yang diambil dan kategori penggunaan tanah di mana penilaian itu dibuat.

Diputuskan, sebulat suara menolak rayuan:

(1) PK tidak terkhilaf ketika memutuskan bahawa tanah yang diambil alih adalah bukan sebahagian dari pembangunan bercampur dan oleh itu nilainya tidak boleh dinilai menurut jenis itu (lihat perenggan 38).

(2) Pemberitahuan warta untuk pengambilalihan itu adalah pada 19 Julai 2018. Sehingga 9 Ogos 2018, kategori kegunaan tanah bagi tanah yang diambil telah dinyatakan sebagai 'NIL'. Seperti yang diputuskan oleh PK, yang dipersetujui oleh penilai-penilai, menurut s 9A(5) Akta Pengambilan Tanah 1960 ('APT'), maklumat mengenai penggunaan tanah yang diambil haruslah diperolehi daripada Pengarah Perancangan Bandar dan Desa Negeri dan maklumat tersebut adalah bukti konklusif mengenai penggunaan tanah pada tarikh pengambilalihan. Dalam kes ini, responden pertama telah mendapat maklumat mengenai penggunaan tanah daripada Pengarah Perancangan Bandar dan Desa Negeri Pahang yang mana di dalam surat bertarikh 11 Disember 2019, Pengarah Negeri telah menyatakan bahawa tanah yang diperolehi telah dizonkan untuk kegunaan tanah 'infrastruktur dan utiliti' yang mana satu-satunya aktiviti yang dibenarkan adalah yang berkaitan dengan bekalan elektrik dan air, pengairan dan saliran, telekomunikasi, pengurusan sisa pepejal dan sanitasi. Berdasarkan perkara itu, kebergantungan perayu kepada surat Majlis Daerah Cameron Highlands bertarikh 1 Disember 2020 untuk menghujahkan bahawa tanah yang diambil telah dizonkan untuk pembangunan bercampur dan harus dinilaikan sedemikian adalah jelas merupakan satu kekhilafan (lihat perenggan 28 & 32–37).

(3) Perenggan 2(1) Jadual Ketiga APT menyatakan bahawa laporan penilaian pemohon sahaja haruslah membangkitkan kes prima facie bagi pemohon yang mana beban adalah pada pemohon untuk membangkitkan kes prima facie untuk satu tindakan tuntutan pampasan yang tidak mencukupi. Tiada dinyatakan di dalam laporan penilaian perayu mengenai sebarang penjualan tanah dengan ciri-ciri yang sama seperti tanah yang diambil, iaitu tanah yang telah dizonkan untuk infrastruktur dan utiliti. Perayu kini tidak boleh menyalahkan PK kerana gagal mempertimbangkan transaksi tersebut apabila perayu sendiri telah gagal mengemukakan transaksi yang serupa melibatkan tanah yang dizonkan untuk infrastruktur dan utiliti di dalam laporan penilaiannya. Laporan penilaian perayu adalah berdasarkan tanggapan yang salah bahawa tanah yang diambil itu dizonkan untuk pembangunan bercampur dan laporan itu menyatakan tiga transaksi penjualan tanah yang serupa di kawasan itu berdasarkan penggunaan tanah tersebut. Oleh kerana tanah yang diperolehi telah dizonkan untuk infrastruktur dan utiliti, PK dibenarkan untuk menolak perbandingan transaksi jualan

yang melibatkan tanah yang dizonkan untuk pembangunan bercampur (lihat perenggan 40–44).

(4) Memandangkan hujahan perayu telah ditolak bahawa tanah yang diambil harus dinilai sebagai tanah pembangunan bercampur dan perayu telah gagal untuk membuktikan kes prima facie bagi tanah yang diambil itu, PK telah meneliti laporan penilai kerajaan dan dengan pengubahsuaian yang diperlukan meningkatkan nilai daripada RM540,000 sehektar kepada RM670,000 sehektar yang menyebabkan jumlah pampasan kepada perayu dinaikkan kepada RM4,020,000 (lihat perenggan 46).

(5) Rayuan terhadap keputusan Mahkamah Rujukan Tanah hanya boleh dibuat atas persoalan undang-undang. Kuantum pampasan yang diberikan tidak boleh dirayu. Hal ini berdasarkan peruntukan s 40D(3) dan s 49(1) APT. Oleh kerana persoalan undang-undang yang ditimbulkan di dalam kes rujukan tanah ini berkaitan dengan isu-isu fakta tentang bagaimana prinsip penilaian digunakan ketika mengira jumlah pampasan yang diberikan, iaitu, bagaimana jumlah akhir pampasan itu diberikan dan bagaimana jumlah itu salah, mereka tidak menepati ujian persoalan undang-undang yang betul dan ianya tidak boleh dibenarkan di bawah peruntukan s 49(1) APT (lihat perenggan 16, 47–48 & 50–51).]

Cases referred to

Amitabha Guha (as beneficiary for the estate of Madhabendra Mohan Guha) v Pentadbir Tanah Daerah Hulu Langat [2021] 4 MLJ 1; [2021] 2 MLRA 19, FC (refd)

Ng Chin Chai v Pentadbir Tanah Segamat and other appeals [2016] MLJU 1702; [2016] 4 CLJ 693, CA (refd)

Ong Yan & Anor v Collector of Land Revenue Alor Gajah, Malacca [1986] 1 MLJ 405; [1985] 1 LNS 105 (refd)

Pentadbir Tanah Daerah Johor v Nusantara Daya Sdn Bhd [2021] 4 MLJ 570, FC (folld)

Semenyih Jaya Sdn Bhd v Pentadbir Tanah Daerah Hulu Langat and another case [2017] 3 MLJ 561; [2017] 4 MLRA 554; [2017] 5 CLJ 526, FC (refd)

Legislation referred to

Federal Constitution art 13(1)

Land Acquisition Act 1960 ss 9A(5), 38(1), 40D(3), 49(1), First Schedule, para 2, Third Schedule, para 2(1), Form N

Appeal from: *Blue Valley Plantation Bhd dan satu lagi lwn Pentadbir Tanah dan Daerah Cameron Highlands* [2021] MLJU 1258 (High Court, Temerloh)

V Manokaran (with Yohendra Nadarajan) (Yohendra Nadarajan) for the appellant.
Munirah bt Shamsudin@Baharum (Pahang State Legal Advisor's Office) for the first respondent.
Noor Syakirah Khalil (Jasbeer Nur & Lee) for the second respondent.

Azizah Nawawi JCA:

INTRODUCTION

[1] This is an appeal filed by the appellant, Blue Valley Plantation Sdn. Bhd. against the decision of the learned judicial commissioner ('JC') dated 28 April 2021 in the matter of the Temerloh High Court Land Reference No CB-15–13–10 of 2019 ('the decision').

[2] The learned JC had increased the compensation awarded by the Pentadbir Tanah Daerah Cameron Highland ('PTD') by an additional sum of RM456,000, thereby increasing the total compensation from RM3,564,000 to RM4,020,000 for the acquisition of the appellant's land. Despite the increase in the award, the appellant had appealed against the said decision.

[3] Having considered the appeal records and the submissions of the parties, this court had dismissed the appeal. Our decision was unanimous and these are the grounds for our decision.

SALIENT FACTS

[4] The appellant is the registered proprietor of HSD 3541, No Lot 2175, Mukim Ulu Telom, Daerah Cameron Highlands, Negeri Pahang ('the said land').

[5] The second respondentt, Pylon Range Sdn Bhd is the sole owner of the shares and assets in the appellant.

[6] A portion of the said land measuring six hectares was gazetted for acquisition for the purpose of building a TNB substation ('the acquired land'). The gazette notification was dated 19 July 2018.

[7] An inquiry was held by the PTD and compensation was awarded at the price of RM594,000 per hectare, totalling the sum of RM3,564,000 for the six hectares acquired.

[8] Being dissatisfied with the award, the appellant had filed an objection in Form N requiring the PTD to refer the matter to the High Court for a

A determination as provided under s 38(1) of the Land Acquisition Act 1960 ('the LAA').

DECISION OF THE LAND ADMINISTRATOR

B **[9]** An inquiry was held by the first respondent and compensation was awarded at the price of RM594,000 per hectare, with a total sum of RM3,564,000 for the six hectares acquired.

DECISION OF THE HIGH COURT

C

[10] The appellant had appealed to the High Court against the compensation awarded by the PTD. Both the respondent and the appellant had relied on their respective valuation reports at the inquiry and before the High Court.

D

[11] The appellant's valuer had based their report on comparisons of sales of lands within the vicinity which were zoned for mixed development and/or development and assessed the compensation payable to be RM22,602,000 for the six hectares acquired.

E

[12] The report of the Government's valuer was based on the comparisons of sales of lands within the vicinity which were categorised either as agricultural or nil, and assessed the value to be RM540,000 per hectare based on a sale of an agricultural land in the vicinity, with a total compensation of RM3,240,000.

F

[13] The private assessor had opined that compensation be awarded at the sum of RM646,000 per hectare with a total sum of RM3,876,000, an increase of RM312,000 from the PTD's Award.

G

[14] The Government's Assessor gave a written opinion that compensation be awarded at the sum of RM670,000 per hectare with a total sum of RM4,020,000, an increase of RM456,000 from the PTD's Award.

H

[15] Having considered the case, the learned JC made the following findings:

> [26] Setelah meneliti affidavit-affidavit, nota prosiding dan laporan-laporan penilaian oleh pihak-pihak, mahkamah memutuskan amaun pampasan yang diberikan adalah sebanyak RM670,000 sehektar dan jumlah keseluruhannya RM4,020,000 iaitu penambahan sebanyak RM456,000 daripada award yang diberikan oleh Pentadbir Tanah dan Daerah Cameron Highlands.

I

OUR DECISION

[16] It is common ground that an appeal against the award of the Land Reference Court is only on questions of law, whilst the quantum of compensation awarded is not appealable. This is based on sub-s 40D(3) read with sub-s 49(1) of the LAA, which reads as follows:

> (3) Any decision made under this section is final and there shall be no further appeal to a higher Court on the matter.

Subsection 49(1) of the LAA reads as follows:

> (1) Any person interested, including the Land Administrator and any person or corporation on whose behalf the proceedings were instituted pursuant to section 3 may appeal from a decision of the Court to the Court of Appeal and to the Federal Court:
>
> *Provided that where the decision comprises an award of compensation there shall be no appeal therefrom*. (Emphasis added.)

[17] In *Semenyih Jaya Sdn Bhd v Pentadbir Tanah Daerah Hulu Langat and another case* [2017] 3 MLJ 561; [2017] 4 MLRA 554; [2017] 5 CLJ 526 the Federal Court stated as follows:

> [155] To sum up, the proviso to sub-s 49(1) of the Act does not represent a complete bar on all appeals to the Court of Appeal from the High Court on all questions of compensation. *Instead the bar to appeal in sub-s 49(1) of the Act is limited to issues of fact on ground of quantum of compensation. Therefore an aggrieved party has the right to appeal against the decision of the High Court on questions of law*. (Emphasis added.)

[18] This position was reaffirmed by the Federal Court in the case of *Amitabha Guha (as beneficiary for the estate of Madhabendra Mohan Guha) v Pentadbir Tanah Daerah Hulu Langat* [2021] 4 MLJ 1; [2021] 2 MLRA 19 where the compensation awarded by the High Court in a land acquisition matter was disputed on appeal. The Federal Court speaking through Vernon Ong FCJ at para [45] and [46] of the judgment held that:

> [45] Section 49 provides that any person may appeal from a decision of the High Court to the Court of Appeal and to the Federal Court. *However, it is important to note that the appeals must not relate to a decision which comprises an award of compensation*: see proviso to s 49(1). *To underscore the finality of decisions on compensation, it is further stipulated that there shall be no further appeal on the matter: see* s 40D(3). *Insofar as the High Court's decision is a decision on compensation, that there shall be no appeal to the Court of Appeal is acknowledged by sub-s 68(1)(d) of the CJA 1964 which stipulates in clear and unequivocal terms that no appeal shall be brought to the Court of Appeal where, by any written law for the time being in force, the judgment or order of the High Court is expressly declared to be final* (see also *Semenyih Jaya* at paras [135]–[139] and [140]–[155]).
>
> What is a question of law?

A [46] It follows from the preceding paragraph that appeals to the Court of Appeal and to the Federal Court may only be mounted on questions of law. (Emphasis added.)

B **[19]** Therefore, the first issue is whether the questions posed are 'question of law' within the meaning and ambit of the proviso to sub-s 49(1) of the LAA.

C **[20]** The law on this matter is well settled. The Federal Court in *Pentadbir Tanah Daerah Johor v Nusantara Daya Sdn Bhd* [2021] 4 MLJ 570 had taken a strict approach in interpreting the circumstances and meaning of what might amount to a 'question of law' under the proviso to sub-s 49(1) of the LAA. Mary Lim FCJ held as follows:

D [51] As a starting point, we would adopt the general proposition as set down in *Amitabha Guha No 2*, that 'In a general sense, a question of law is an issue involving the interpretation of law (statutes or legal principles) and the application of the law to the facts of each individual case', but with a strong rider and only to that extent. This general proposition must be appreciated, understood and applied in the context of the proviso to s 49(1), ruled by this court in *Semenyih Jaya* to be a valid provision of law, that s 49(1) *limiting the right of appeal does not violate* arts 13 and 121(1B) of the Federal Constitution — see paras [165] to [173].

E [52] This general proposition also is not to be taken as suggesting, even for the slightest moment, that s 49(1) is to be given a liberal reading so as to render nugatory the clear intent of precluding appeals from decisions of the High Court on compensation. *This proposition is not to be read as allowing in any way, what in pith and substance, are appeals on compensation*. After all, as explained in *Semenyih Jaya*:

F > ... a right of appeal is statutory... it simply means that when conferred by statute, the right of appeal becomes a vested right. Correspondingly, the jurisdiction of the court to hear appeals is also conferred by statute (see *Auto Dunia Sdn Bhd v Wong Sai Fatt & Ors* [1995] 2 MLJ 549; [1995] 3 CLJ 485); *Wan Sagar Wan Embong v Harun Taib* [2008] 4 MLJ 473; [2008] 5 CLJ 14).

G > [150] A fortiori, the nature of the appeal depends on the terms of the statute conferring that right. It is a matter of construction to be given to the provisions conferring the right to appeal. Legislative intention can also be found by examining the legislation as a whole. Limiting the right to bring an appeal is a way of encouraging finality. If an examination of the language and policy of the

H > Act granting the right of appeal concludes that Parliament intends to limit an appeal, the court must give effect to it.

[53] There are several reasons why we advocate for such an approach.

I [54] Firstly, in coming to that conclusion, as we mentioned, the Federal Court had clearly affirmed the validity and constitutionality of s 49(1). The Federal Court had examined the due process of adjudication under Act 486 and found that by virtue of s 45 and the Third Schedule of Act 486, there was no violation of art 13 of the Federal Constitution. The Federal Court acknowledged that an award of compensation involves two stages of hearings. First, before the Land Administrator and later, at the High Court. At the enquiry before the Land Administrator, parties

are entitled to produce evidence on the valuation of the scheduled land while at the High Court, each party is allowed to bring experts to court to prove their claim on compensation. Although this is through an exchange of affidavits, deponents may be cross-examined. This due process of hearing and decision making on the assessment of compensation ensured adherence of art 13(2) of the Federal Constitution.

[55] Further, the added feature of inclusion of assessors in Act 486 (which was not outlawed in *Semenyih Jaya*) augments and contributes towards that compliance and safeguard. The provisions on assessors were introduced in the same amendments to Act 486 that brought in the proviso to s 49(1) and excluding appeals on compensation. The Court of Appeal in *Hartawan Development Sdn Bhd v Pentadbir Tanah Daerah Melaka* rightly explained that 'whilst precluding the right of appeal against an order of compensation issued by the High Court, there are four new sections introduced by the Land Acquisition (Amendment) Act 1997 which came into force on 1 March 1998. These sections are intended to provide clearer provisions for assessing the value of lands compulsorily acquired. When an objection in regard to compensation is referred to the court, the judge hearing a land reference shall appoint two assessors to assist and aid the judge who, inter alia, look into the valuation report and/or any expert evidence before coming to a fair compensation. The requirement for the judge to be guided by assessors is warranted as the judge is not an expert in land valuation. Therefore, the opinion of the assessors is deemed necessary'. Assessors are mandatorily provided for in s 40A. See also *Kelana Megah Development Sdn Bhd lwn Pentadbir Tanah Daerah Kota Tinggi & Satu Lagi Dan Rayuan Yang Lain* [2019] 1 MLJ 723; [2018] 1 LNS 1655.

[56] The Federal Court expressed similar views in *Amitabha Guha No 2* whilst giving its rationale for having two assessors under the amended Act 486; that these assessors are 'trusted to exercise professional integrity in assisting the judge. The fact that the judge has a choice between the opinions of the Government assessor and the private assessor was highlighted to alleviate concerns that the Government assessor may give a lower valuation':

> [50] Of course, assessors are not the decision-makers; they only act in an advisory capacity to the judge. As members of the land reference court under the LAA 1960, assessors sit with the judge during and after the hearing, and are required to give non-binding opinions in writing on questions of fact based on the evidence. In land reference proceedings, the provisions of the Third Schedule on Evidence and Procedure in Land Reference Cases shall apply to the proceedings: see s 45(1A) of the LAA 1960. Pursuant thereto, the evidence to be considered by the assessors and the judge includes the applicant's valuer's report, the respondent's valuer's report, including oral evidence by the applicant's valuer and/or the respondent's valuer during cross-examination and re-examination, if any. The Government assessor and the private assessor hear and consider the evidence and arrive at an opinion on the facts, which is then presented to the judge in the form of a written opinion: see s 40C of the LAA 1960. Even though the assessors are sources of information on matters within their own special skill or knowledge, they are not expert witnesses as their advice does not amount to evidence. More pertinently, the assessors and the judge are required to apply the Principles Relating to the Determination of Compensation under the First

Schedule of the LAA 1960: see sub-s 47(2) of the LAA 1960.

[57] A further reason is this — considering that this 'carve-out' exclusion to the express prohibition of appeal is judge-made and is as interpreted by the Federal Court in Semenyih Jaya (even then it was really as per the question framed), we would strongly caution against giving the phrase 'question of law' a wide or flexible understanding and construct. See *UKM v Attorney General* [2018] SGHCF 18. This qualifier does not appear at all in the plain and unambiguous terms of s 49(1) neither does it exist in the now invalidated s 40D. A narrow and strict construction of s 49(1) was adopted in order to 'give meaning to the constitutional protection of a person's right to his property' — see para [148].

[58] *Consistent with that approach, the circumstances and meaning of what may amount to a 'question of law' under the proviso to* s 49(1) must also be 'narrowly and strictly construed'; that the definition must not be extensive as it would undermine the clear intent of the proviso to s 49(1) — that there is no right of appeal in respect of decisions comprising an award on compensation.

THE QUESTIONS OF LAW POSED

[21] The questions of law posed in the memorandum of appeal dated 23 July 2021 are as follows:

(a) the learned judicial commissioner erred in law in not complying with the mandatory statutory provisions in the Land Acquisition Act 1960 and the schedule containing therein in the exercise of his powers in assessing the compensation payable to the landowner; and

(b) the decision of the learned judicial commissioner is in breach of art 13(1) of the Federal Constitution.

[22] The questions of law posed in the supplemental memorandum of appeal dated 5 August 2021 reads as follows:

1) The Learned judicial commissioner erred in law, in, after having accepted the notification of the State Director of Town and Country Planning Department Pahang, that the scheduled lands (acquired lands) were zoned for infrastructure and utilities, failing to assess the compensation by having regard to the specific land use for that land as indicated in the development plan, as mandated by the provisions of Rule 1(2BA) *of the First Schedule of the Land Acquisition Act 1960.*

2) The Learned judicial commissioner erred in law in failing to have regard to the prices paid for the recent sales of lands with similar characteristics as the scheduled land ie, infrastructure and utilities land, as mandated by Rule 2 of the First Schedule of the Land Acquisition Act 1960.

3) The Learned judicial commissioner erred in law in not stating in his Lordship's Judgment, the land category on which the assessment by his Lordship of the land value was based and how his Lordship determined the value of the scheduled lands to be RM670,000 per hectare.

4) The Learned judicial commissioner erred in law in giving judgment without the benefit of the full oral submissions that had been made before the previous judge who heard the matter on 18 November 2020.

[23] The two questions of law posed in the memorandum of appeal dated 23 July 2021 are too general in nature. However, from the additional memorandum of appeal dated 5 August 2021, the appellant had raised four issues of law. However, since there was no submission on issue (4), the same is deemed to have been abandoned.

Issue 1 — Whether the learned JC has failed to consider the land use as indicated in the development plan.

[24] In both their written submission and oral submissions before this court, the main issue raised by the appellant is the failure of the learned JC to assess the compensation by having regard to the specific land use for that land as indicated in the development plan. The appellant had relied on a letter from Majlis Daerah Cameron Highlands dated 1 December 2020 which stated, inter alia, as follows:

2. Dimaklumkan bahawa kawasan atau tanah yang dirujuk atau dimaksudkan adalah terletak dalam Zon Pembangunan bercampur mengikut Rancangan Tempatan Daerah Cameron Highlands 2030 (Penggantian).

[25] It is therefore the submission of the appellant that the learned JC had erred in law in the following manner:

28. As a consequence of viewing the said land as distinct and separate from the mixed development, the learned judge rejected comparisons of the price of mixed development lands in the vicinity. [See para 20 & 21 of judgment at p 21 of the RR Tambahan (encl BJ)

[20] Selain daripada itu, perbandingan tersebut tidak sesuai kerana mempunyai perancangan pembangunan bercampur. Ianya tidak sesuai untuk harta tanah ini (yang menjadi pertikaian dalam kes ini) disebabkan harta tanah ini mempunyai tanah infrastruktur dan utiliti.

[21] Oleh yang demikian, harga urusniaga harta tanah tersebut tidak boleh dijadikan perbandingan mutklak bagi menentukan harga pasaran harta tanah di dalam kes ini.

29. The learned judicial commissioner did not give any weight to the submissions of the appellant that the scheduled lands being part of the mixed development should be assessed on the basis of the mixed development plan. [see p 799 at RR Jilid 2D (encl 7J para 12 (Blue Valley's Submissions for Clarification)]

30. The learned judicial commissioner's decision is in direct contravention of para (28A) of section 1 of the 1st Schedule of LAA 1960 which clearly states 'that the

land shall be assessed by having regard to the specific land use for that land as indicated in the development plan.

[26] From the above submissions, the issue posed by the appellant before this court is whether the learned JC had erred in law and in fact when he failed to take into consideration that the scheduled lands, being part of the mixed development, should have been assessed on the basis of the mixed development plan.

[27] The first issue for determination then is whether the scheduled lands are part of mixed development land at the time of acquisition.

[28] The gazette notification for the acquisition was dated 19 July 2018. It is not in dispute that based on the title search dated 9 August 2018, the land use category of the scheduled land was 'NIL'.

[29] However, the appellant had relied on a letter from Majlis Daerah Cameron Highlands dated 1 December 2020 which stated that land referred to or mentioned by the appellant is located within the mixed development zone.

[30] It is therefore the submission of the appellant that the compensation should be based on mixed zone development.

[31] We now make reference to s 9A(5) of the LAA, which inter alia, read as follows:

> 9A Land Administrator to obtain information on land use of schedule land, etc.
>
> (1) For the purpose of assessing the amount of compensation under the First Schedule, the *Land Administrator shall request from the State Director of Town and Country Planning information on the following matters:*
>
> (a) whether the scheduled land is within a local planning authority area;
>
> (b) whether the scheduled land is subject to any development plan under the law applicable to it relating to town and country planning; and
>
> (c) if there is a development plan, the land use indicated in the development plan for the scheduled land.
>
> ...
>
> (5) *The information obtained by the Land Administrator under this section shall be conclusive evidence, for the purpose of valuing the scheduled land, with regard to the land use at the date of the acquisition* and shall not be used for any purpose other than for the purposes of this Act. (Emphasis added.)

[32] Therefore pursuant to sub-s 9A(5), the information regarding the land

use of the scheduled must be obtained from the State Director of Town and Country Planning, and the same shall be the conclusive evidence with regard to the land use at the date of the acquisition.

[33] In the present case, the land administrator had obtained the information regarding the land use of the scheduled from the Pahang State Director of Town and Country Planning, where in the letter dated 11 December 2019, the State Director has stated as follows:

> 2. Sukacita dimaklumkan Jabatan telah melengkapkan borang *semakan bagi lot berkenaan terletak dalam zon guna tanah infrastruktur dan utiliti berdasarkan draf rancangan tempatan daerah Cameron Highlands penggantian 2030* berdasarkan kelas kegunaan tanah aktiviti lain yang dibenarkan ialah bekalan elektrik, bekalan air, pengairan dan perparitan, telekomunikasi, pengurusan sisa Pepejal dan pembentungan sahaja. (Emphasis added.)

[34] As such, we are of the considered opinion that the appellant's reliance on the letter dated 1 December 2020 from the Planning Department of Majlis Daerah Cameron Highlands with regards to the mixed zone land use is clearly misconceived.

[35] In fact, from the letter dated 11 December 2019, the State Director has clearly stated that the scheduled land 'terletak dalam zon guna tanah infrastruktur dan utiliti'. As such, based on the land use zoning, the permitted activities are electricity, water supply, irrigation and drainage, telecommunications, solid waste management, and sanitation only.

[36] Added to that, in their respective reports, both assessors are on common ground that pursuant to s 9A(5) of the LAA the information regarding the land use of the scheduled must be obtained from the State Director of Town and Country Planning, and the same shall be the conclusive evidence with regard to the land use at the date of the acquisition.

[37] Indeed, this was also the finding of the learned JC in his judgment:

> [22] Sementara itu, berkenaan dengan kedudukan tanah ini yang dikatakan terletak di dalam zon award tanah infrastruktur dan utiliti berdasarkan Draf Rancangan Tempatan Daerah Cameron Highlands (Penggantian) 2030. Mahkamah dalam konteks ini merujuk kepada seksyen 9A Akta Pengambilan Tanah 1960 yang menyatakan seperti berikut:
>
> > Section 9A — Land Administrator to obtain information on land use of scheduled land, etc.
>
> ...
>
> [23] *Ini bermakna bagi menentukan kesahihan kedudukan penggunaan tanah bagi*

A *anggaran amaun pampasan pengesahan dari Pengarah Perancangan Bandar dan Desa Negeri adalah konklusif seperti dinyatakan di bawah s 9A(5) Akta Pengambilan Tanah 1960. Hasil maklumat dari Jabatan Perancangan Bandar dan Desa Negeri Pahang Darul Makmur bertarikh 11.12.2019 kepada Jabatan Penilaian dan Perkhidmatan Harta Kuantan seperti di halaman 1B Pendapat Pengapit (Laporan Lanjutan)*
B *menyatakan ia terletak di dalam zon struktur infrastruktur dan utiliti.*

[24] *Oleh yang demikian, mahkamah ini tidak dapat bersetuju bahawa tanah ini telah termasuk di dalam Zon Pembangunan Bercampur dan tidak boleh dijadikan asas dalam pemberian pampasan tanah.* (Emphasis added.)

C **[38]** Therefore, we are of the considered opinion that the learned JC was not plainly wrong in his findings that the land use as mixed development zone cannot be used as a basis for the compensation. We agree with the findings of the leaned JC that since the scheduled lands are not part of the mixed
D development, therefore the scheduled land should not be assessed on the basis of the mixed development plan in the appellant's valuer's report.

Issue 2 — Whether the learned JC has failed to consider the sales of lands with similar characteristics as the scheduled land, that is, infrastructure and utilities land

E **[39]** The next issue raised by the appellant is that the learned JC has erred in law in failing to have regard to the prices paid for the recent sales of lands with similar characteristics as the scheduled land, that is infrastructure and utilities land, as mandated by para 2 of the First Schedule of the LAA.

F **[40]** However, pursuant to para 2(1) of the Third Schedule of the LAA, the valuation report of the appellant's alone must establish a prima facie case for the applicant:

G 2. *Valuer's report and oral evidence*

(1) The applicant's valuer's report alone must establish a prima facie case for the applicant.

H **[41]** Therefore, under the LAA, there is a legal requirement that the appellant's valuer's report alone must establish a prima facie case, as can be found in para 2(1) of the Third Schedule of the LA. Wan Yahya J in *Ong Yan & Anor v Collector of Land Revenue Alor Gajah, Malacca* [1986] 1 MLJ 405 at p 407; [1985] 1 LNS 105 said as follows:

I In land acquisition cases the *burden is on the applicant to make out a prima facie case of inadequate award. Only when he succeeds in doing so would the respondent be called upon to introduce his evidence; otherwise the applicant's case must fail and the collector's award should stand.* (Emphasis added.)

[42] If we look at the appellant's valuer's report, there is nothing on any sales of lands with similar characteristics as the scheduled land, that is, infrastructure and utilities land. The appellant now cannot blame the learned JC for failing to consider such transactions involving infrastructure and utilities land when the appellant themselves have failed to provide the said comparable.

[43] Added to that, the appellant's valuer's valuation is premised on the letter dated 1 December 2020 from the Planning Department of Majlis Daerah Cameron Highlands that the scheduled land is zoned for mixed development. Based on this, the three comparable(s) used are sales of lands within the vicinity which were zoned for mixed development and/or development.

[44] Since the scheduled land is zoned for infrastructure and utilities, we find that the learned JC was legally justified in rejecting the comparisons of the prices of mixed development lands in the vicinity land. The appellant had failed to provide the correct comparable of infrastructure and utilities land in their valuation report.

Issue 3 — Whether the learned JC has erred in law in not stating the basis of his determination of the value of the scheduled lands

[45] In the present appeal, the Government's valuer had assessed compensation at RM540,000 per hectare based on a sale of an agricultural land in the vicinity, with a total compensation of RM3,240,000; whilst the appellant's valuer had based their report on comparisons of sales of lands within the vicinity which were zoned for mixed development and/or development and assessed the compensation payable to be RM22,602,000, based on RM2,450,000 per hectare.

[46] The learned JC had rejected the appellant's valuer's assessment on the basis that the comparable therein are in the mixed development zone and therefore cannot form the basis for the land compensation for the scheduled land. Another comparable was rejected on the basis that the sale was not at arm's length (for Lot PT 3114). Since the appellant had failed to establish the prima facie value for the scheduled land, the learned JC had looked at the Government Valuer's report with the necessary modification, by increasing the value from RM540,000 per hectare to RM670,000 per hectare.

[47] At the end of the day, we are therefore of the considered opinion that the proposed questions of law raised against the learned JC's decision boils down to the issue of compensation. Bereft of the legal basis/foundation, the complaint of the appellant revolves essentially on the issues of fact on how the valuation principles apply when computing the amount of compensation to be awarded

for the acquisition. In other words, the purported questions of law pertain to how the final amount of the compensation was arrived at and how that amount was wrong.

[48] Based on the principle laid down the Federal Court in *Nusantara Daya*'s case, we are of the opinion that the application of law on the valuation principles are not questions of law within the narrow and limited scope of what or how such question of law may be properly and validly taken on appeal under the proviso in sub-s 49(1) LAA. In *Nusantara Daya*'s case, the questions posed are as follows:

> THE TEN QUESTIONS POSED
>
> [72] Be that as it may, returning thus to our appeal. With the principles now properly emplaced, we turn now to the questions of law posed at the Court of Appeal. In the instant appeal, ten questions of law were posed in the memorandum of appeal at the Court of Appeal:
>
> (a) whether the High Court is permitted to use or rely on a Government valuation report when it is proven that the report is misleading and failed to disclose material information;
>
> (b) whether the failure to disclose material information in a valuation report prepared in connection with land acquisition cases renders the report unreliable and that consequently such a tainted report ought to be disregarded;
>
> (c) whether the High Court in a land acquisition case is entitled to embark upon its own assessment of the market value of the land acquired, disregarding the valuation reports prepared by professional valuers and disregarding evidence of comparable sales referred to therein by professional valuers;
>
> (d) whether the High Court erred in law in failing to apply the mean principle when faced with evidence from competent valuers of a range of price a property might fetch in the open market;
>
> (e) whether the High Court erred in law in failing to hold that the respondent's conclusion that Lot 20952 Township of Johor Bahru was not transacted at RM42m but was instead the proceeds of a joint-venture was wrong and that the respondent had thereby disregarded an appropriate comparable on an erroneous assumption;
>
> (f) whether the High Court erred in law in failing to hold that the Government valuer had improperly rejected a comparable by the appellant's valuer simply on account that the comparable was not in the immediate vicinity of the subject land;
>
> (g) whether the High Court erred in law in holding that the potential development value of the scheduled land had already been factored into the transacted value of a comparable that had no development potential;

(h) whether the High Court erred in law in concluding that a deduction should be made to the scheduled land because of its larger size on the basis that it would attract lesser potential buyers;

(i) whether the High Court erred in law in holding that the proximity of a closed water treatment plant and a house of worship to the scheduled land is a negative factor that would impact potential buyers when there was no such evidence before the High Court; and

(j) whether the High Court erred in law in failing to order the respondent to refund the deposit to the appellant despite the increase in the award.

[73] These ten questions crystallised into the three main points that we referred to at the commencement of these deliberations; that is, the learned judge had erred in:

(a) making a 10% deduction to the market value because of the size of the scheduled land when compared with that of comparable No 1;

(b) the double counting of 5% for 'location'; 10% for 'access'; and yet another 5% for 'layer' when all are 'three sides of the same pyramid and that separate deductions for similar if not identical characteristics of the scheduled land is a clear instance of double counting that is wrong in law; and

(c) finding that the potential development value of the scheduled land had already been factored into the transacted value of comparable No 1 when that comparable had no development potential.

These three main points though on compensation, were argued to be questions of law as allowed by *Semenyih Jaya*, to which the Court of Appeal agreed.

...

[77] First and foremost, the respondent's appeal at the Court of Appeal was undeniably an appeal on compensation. But for the reservation expressed in *Semenyih Jaya*, that appeal would have fallen squarely within the prohibition in the proviso to s 49(1) *and stand barred. However, the respondent successfully invoked the exception or reservation and was able to convince the Court of Appeal that its questions were all questions of law within the understanding of Semenyih Jaya.*

[78] *The issue thus before us is whether the ten questions posed in the memorandum of appeal or the three main points finally argued before and decided by the Court of Appeal are really questions of law, as envisaged in Semenyih Jaya, or are they, as suggested by the appellant, disguised attempts to circumvent the statutory bars in* s 40D(3) *and the proviso to* s 49(1) *of Act 486.*

[79] Having examined all the questions posed, whether we take the ten questions as posed or as grouped into the 'three issues', these questions or issues are all about the award of compensation that was made by the High Court, how the final amount was arrived at and how that amount was wrong. At the end of the day, the High Court, assisted by the assessors, made various deductions in order to arrive at the market value. The High Court, as a land reference court was entitled to make those deductions for the reasons stated, as those deductions are very much fact-based decisions, based on evidence adduced, the analysis of such evidence involving the court's appreciation and impression

A *of such evidence when applying principles of valuation to the facts. Room must be given for a divergence of opinion on the evaluation of such evidence; more so when the appeal is statutorily limited.* (Emphasis added.)

B **[49]** In *Ng Chin Chai v Pentadbir Tanah Segamat and other appeals* [2016] MLJU 1702; [2016] 4 CLJ 693, this court held as follows:

C [46] It is our view that the alleged questions of law, namely, *whether the learned judge was right to reject the appellants' method of valuation and to accept the respondent's comparative method; and the selection of suitable comparable all relate to the issue of compensation in that they are all factors which affect the amount of compensation to be awarded to the appellants* (see s 2 of the First Schedule to the LAA). (Emphasis added.)

D **[50]** The purported questions of law are all related to the issue of compensation. Both the first and the second questions are not supported by the facts in this appeal. The appellant's main premise of compensation, based on mixed development zone, do not support the scheduled land category. The appellant's prima facie evidence, their valuation report, did not provide any comparable for the scheduled land, zoned for infrastructure and utilities. The purported third question is a general question challenging the basis of compensation awarded by the learned JC. Essentially, all the three questions are challenging the method of valuation and the selection of suitable comparable, and these relate to the amount of compensation.

F **[51]** Therefore, we find that the purported questions of law posed before this court do not pass the test of being proper questions of law and should not to be allowed.

CONCLUSION

G **[52]** For the reasons enumerated above, we find no merits in the appellant's appeal that warrant our appellate intervention. Accordingly, we are unanimous in dismissing this appeal with cost.

H *Appeal dismissed.*

Reported by Ashok Kumar

I